

REMARKS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested. After entry of the foregoing amendment, Claims 13-18 remain pending in the present application. No new matter has been added.¹

By way of summary, the Office Action presented the following issues: Claims 13-17 were rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over Claim 14 of U.S. Patent No. 7,346,061 (hereinafter “the ‘061 patent”) in view of U.S. Patent No. 6,282,407 to Vega et al. (hereinafter “Vega”); Claim 17 was rejected under 35 U.S.C. § 101 as directed to nonstatutory subject matter; and Claims 13-17 were rejected under 35 U.S.C. § 103(a) as obvious over Vega in view of Eur. Patent App. Publ’n No. 0 513 507 to Iijima (hereinafter “Iijima”).

STATEMENT OF SUBSTANCE OF INTERVIEW

Applicants and Applicants’ representative wish to thank Examiner Divecha for the courtesy of the personal interview granted on June 7, 2011. During the interview, amendments clarifying the claims over the applied references were discussed. Claim amendments and comments related to those presented during the interview are included herein.

DOUBLE PATENTING REJECTION

Claims 13-17 were rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over Claim 14 of the ‘061 patent in view of Vega. The Office Action acknowledged the ‘061 patent “fails to disclose means for demodulating a second RF signal provided to the communication device from the another device; the means for

¹ The amendments to independent Claims 13 and 16-17 find support at least in Figure 24 and in its accompanying text in the specification.

demodulating receives data at a level of a second threshold or higher, the second threshold being higher than the first threshold.”² To remedy that deficiency, the Office Action relied on Vega.

Vega concerns an electrostatic communication system, in which a “passive read range 125 between passive ES transceiver 102 and ES reader 101 is significantly smaller than the active read range 126 between active ES transceiver 104 and ES reader 101.”³ During the interview, Examiner Divecha asserted that the Vega read range discloses Applicants’ recited thresholds.

Without addressing the propriety of that position, Applicants have amended Claim 13 to expedite prosecution by clarifying that, “when the communication device receives an indication to start a communication of the active mode from the another device, the communication device receives data from the another device at a level of a second field strength threshold or more, the second field strength threshold being higher than the first field strength threshold.” Neither Claim 14 of the ‘061 patent, nor Vega, discloses or suggests that feature. Accordingly, Applicants request the withdrawal of the double patenting rejection.

REJECTION UNDER 35 U.S.C. § 101

Claim 17 was rejected under 35 U.S.C. § 101 as directed to nonstatutory subject matter. Applicants have amended Claim 17 to clarify that the recited storage medium is non-transitory.⁴ Accordingly, Applicants request the withdrawal of the rejection under 35 U.S.C. § 101.

² Office Action at 5.

³ Vega, col. 6, ll. 5-8.

⁴ That amendment to Claim 17 is understood to describe the medium rather than limit data storage persistency. See Subject Matter Eligibility of Computer Readable Media, 1351 Off. Gaz. Pat. & Trademark Office 212 (2010).

REJECTION UNDER 35 U.S.C. § 103

Claims 13-17 were rejected under 35 U.S.C. § 103(a) as obvious over Vega in view of Iijima. In light of that rejection, independent Claims 13 and 16-17 have been amended to clarify the claimed inventions and to thereby more clearly patentably define over the applied references.

Amended Claim 13 is directed to a communication device including, where

[a] means for generating is actuated to initiate an active or a passive mode communication, when [a] means for detecting does not detect [an] RF signal at a level of a first field strength threshold or more, . . . and, when the communication device receives an indication to start a communication of the active mode from the another device, the communication device receives data from the another device at a level of a second field strength threshold or more, the second field strength threshold being higher than the first field strength threshold.

Vega and Iijima do not disclose or suggest those features.

As discussed above, Vega does not disclose or suggest that, “when the communication device receives an indication to start a communication of the active mode from the another device, the communication device receives data from the another device at a level of a second field strength threshold or more, the second field strength threshold being higher than the first field strength threshold,” as recited in amended Claim 13.

Iijima concerns a communication between an external device and an IC card.⁵

According to Iijima,

If the protocol of external device 7 is supported by IC card 1 (YES in step ST202), external device 7 outputs information for selecting its own protocol (step ST203) and then outputs various commands to IC card 1 (step ST204). If the protocol of external device 7 is not supported by IC card 1 (NO in step ST202), error information is output (step ST205).⁶

⁵ Iijima, col. 3, ll. 35-36.

⁶ Id., l. 52.

That is, Iijima merely describes an external device outputting information. Iijima does not disclose or suggest the threshold at which the output information is received.

Iijima does not disclose or suggest that, “when the communication device receives an indication to start a communication of the active mode from the another device, the communication device receives data from the another device at a level of a second field strength threshold or more, the second field strength threshold being higher than the first field strength threshold,” as recited in amended Claim 13.

Thus, Vega and Iijima, taken alone or in combination, do not disclose or suggest that, “when the communication device receives an indication to start a communication of the active mode from the another device, the communication device receives data from the another device at a level of a second field strength threshold or more, the second field strength threshold being higher than the first field strength threshold,” as recited in Claim 13.

For at least the foregoing reasons, independent Claim 13 (and all associated dependent claims) patentably distinguishes over any proper combination of Vega and Iijima.

For at least analogous reasons, independent Claims 16-17 also patentably distinguish over any proper combination of Vega and Iijima.

NEW CLAIMS

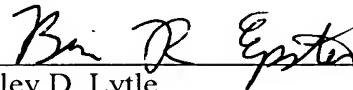
Applicants have added new Claim 18 to set forth the claimed invention in a varying scope. New Claim 18 finds support at least in Figure 24 and in its accompanying text in the specification. Thus, no new matter has been added. New Claim 18 is allowable by virtue of its dependence from Claim 13 and for the more detailed features presented by the new claim.

CONCLUSION

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted the present application is patentably distinguished over the applied references. The application is therefore in condition for allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.

A handwritten signature in dark ink, appearing to read "Brad D. Lytle", is written over a horizontal line.

Bradley D. Lytle
Attorney of Record
Registration No. 40,073

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 07/09)

Brian R. Epstein
Registration No. 60,329